

### **REMARKS**

This is in response to the Office Action mailed June 15, 2006.

Claims 1 and 8 have been amended. Support for amendments to claims 1 and 8 can be found throughout the originally filed application, e.g., paragraph 35 and 42. No new matter is introduced and these are not intended to be narrowing amendments.

Independent claim 1 and its dependent claims 2-7 and independent claim 8 and its dependent claims 9-10 are currently pending and at issue.

#### **Claim Rejections - 35 U.S.C. §103**

The Examiner has rejected claims 1-7 under U.S.C. § 103(a) as being unpatentable over Metz et al (AJH 1:58-60 1988).

The claimed invention is distinct from Metz, which does not disclose, teach or suggest the combination of elements set forth in independent claim 1. Nowhere in Metz is a method disclosed for regulating weight in an overweight non-human animal comprising in combination, during a period of time: (a) administering on a daily basis one or more servings of dairy products to the animal in an amount sufficient to induce weight loss, reduce weight gain, and/or increase the metabolic consumption of adipose tissue in the non-human animal, the one or more servings comprising a therapeutically effective amount of calcium above suboptimal levels, and (b) maintaining the overweight animal on a restricted caloric diet below ad lib.

Instead, Metz is directed to using the simultaneous administration of calcium with sodium. Metz' hypothesis and results suggest that calcium alone is insufficient to reduce body weight, and that high sodium is required with calcium.

Therefore, Metz, either alone or in combination with other knowledge, does not disclose, teach or suggest the claimed invention as set forth in claim 1 or its dependent claims 2-7, which include additional limitations distinguishing them from the cited references, e.g., in claim 2, wherein the animal is a pet; in claim 3, wherein the animal is a dog or cat; in claim 4, wherein the animal is a mouse; in claim 5, wherein the animal is a farm animal; in claim 6, wherein the method reduces the risk of diabetes mellitus; and in claim 7, wherein the dairy products are administered in an amount sufficient to treat, reduce or attenuate obesity.

Claims 1-7 are patentable over Metz because it does not disclose, teach or suggest the present invention. This rejection is traversed. The Applicants respectfully request that this rejection be withdrawn.

### **Claim Rejections - 35 U.S.C. §102**

The Examiner has rejected claims 8-10 under U.S.C. § 102(b) as being unpatentable over Schroeder et al (U.S. Patent No. 4,027,043). The Examiner asserts that Schroeder teaches a solid animal feed supplement containing calcium, which is poured into packages. The Examiner contends that ruminants are disclosed and as to the claimed pet food, such is allegedly merely an intended use. The Examiner concludes that as to the claimed description, such a limitation is not considered patentable during prosecution of composition claims before the USPTO.

However, as admitted by the Examiner, the critical question is whether there exists any new and unobvious functional relationship between the new matter and the substrate. The Examiner asserts that Applicant's instructions are obvious in light of Metz, and that therefore the asserted relationship which may be present, is allegedly obvious and therefore does not render the claim patentable.

Schroeder does not teach or suggest an animal food package comprising (1) a container, (2) a calcium-fortified or dairy-containing animal food within the container, (3) a dietary plan for administering the food to an animal that is overweight, and (4) a description indicating that consuming the animal food according to the dietary plan during the period of time produces benefits attributed to calcium in inducing weight loss, reducing weight gain, and/or increasing the metabolic consumption of adipose tissue, in the overweight animal, and Schroeder does not teach or suggest dietary plan comprising, in combination during a period of time: (a) administering on a daily basis one or more servings of the food, the one or more servings comprising a therapeutically effective amount of calcium above suboptimal levels, and (b) restricting caloric intake below ad lib.

This combination of elements are not taught, disclosed or suggested in Metz or Schroeder, alone or in combination. Schroeder's food packages are directed to feedlot use for weight, maintenance and gain. It teaches away from the methods and packages of the invention, and would not be combined with Metz' teachings. Metz' teaching of high sodium and calcium

diet would be inapplicable to feedlot food packages and combined, would not teach the claimed packages.

Therefore, Metz or Schroeder, either alone or in combination, do not disclose, teach or suggest the claimed invention as set forth in claim 8 or its dependent claims 9 and 10, which include additional limitations distinguishing them from the cited references, e.g., in claim 9, wherein the animal food is pet food; and claim 10, wherein the animal food is farm animal feed.

As discussed above, claims 8-10 are patentable over Metz or Schroeder because these references do not disclose, teach or suggest the present invention. This rejection is traversed. The Applicants respectfully request that this rejection be withdrawn.

### **Conclusion**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicants request that the Examiner issue a Notice of Allowance indicating the allowability of claims 1-10 and that the application be passed to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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